

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

21-4129

United States District Court		District South Dakota, Southern Division
Name (under which you were convicted): <u>QUENTIN P. BRUGUIER JR.</u>		Docket or Case No.: CR-17-40088-KES
Place of Confinement: United States Penitentiary, Tucson AZ	Prisoner No.: 07587-073	
UNITED STATES OF AMERICA		Movant (include name under which convicted) v. <u>QUENTIN P. BRUGUIER JR.</u>

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court for the District of South Dakota,
Southern Division.

(b) Criminal docket or case number (if you know): CR 17-40088-KES

2. (a) Date of the judgment of conviction (if you know): 11-16-2018

(b) Date of sentencing: 02/11/2019

3. Length of sentence: Life

4. Nature of crime (all counts):

18 U.S.C. §§ 2242(1), 2246(2), 1153 X 4 Sexual Abuse
18 U.S.C. §§ 2244(a)(1), 2245(3), 1153 X 3 Abusive Sexual Contact
18 U.S.C. §§ 2241(c), 2245(2), 1153, X 3 Aggravated Sexual Abuse of a Child
18 U.S.C. §§ 2241(c), 2246(2), 1153 X 5 Aggravated Sexual Abuse of a Child

5. (a) What was your plea? (Check one)

(1) Not guilty ☒

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☒

No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

- (a) Name of court: U.S. Court of Appeals 8th Circuit
- (b) Docket or case number (if you know): 19-1375
- (c) Result: Denied
- (d) Date of result (if you know): 06/09/2020
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: Abuse of discretion Heresay Exception under Rule 807.(2);
Constitutional error for Obstruction of Justice Guideline § 3C1.1.(3);
Obstruction of Justice sentence Substantially Unreasonable.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐ N/A

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☐

N/A

(2) Second petition:

Yes ☐

No ☐

N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Defendant's due process (5th Amendment) right were violated when evidence of innocence was lost.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Change of counsel, leading to staleness of pretrial proceedings preventing testimony of alibi witness by her death.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Counsel was ineffective for lack of trial experience violating defendant's due process.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel failed to gain more time to prepare for trial after becoming newly appointed defense for the defendant's defense; failed to demonstrate public interest in right to innocence is paramount and must be balanced against the alleged victim's inconvenience of trial delay; did not convince the court the necessity for the court to appoint additional help to deal with the barrage of new indictments generated by the government during pretrial delays.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Issue not available to raised.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Counsel was ineffective for not rebutting/impeaching victim witness recall memory reliability after admitted substance abuse.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel did not provide expert witness testimony to challenge recall memory reliability of alleged victim's reporting events of 15 years prior while in the interim they were involved in chronic substance abuse.

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

-
- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Counsel was ineffective for failing to demonstrate that prosecuting state crimes is out of court's jurisdiction prejudicing defendant.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Prosecuting criminal counts 6, 7, 8, 9, 10, and 11 which occurred outside the federal court's jurisdiction occurring in state jurisdiction prejudicing the jury against the defendant and he could not receive a fair trial under the 5th and 6th amendments of the Constitution.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

GROUND FIVE Counsel was ineffective for failing to provide the jury a view of a crowded house that prevented the opportunity to abuse.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 Statements of the deceased alibi witness by creditable federal agents while not providing the jury evidence of innocence, a comprehensive view of the chaos of a many people living in a small house with constant traffic more likely than not would have shown the unlikely hood of opportunity to engage in the behavior alleged and rebut testimony of multiple instances of abuse several times a day every day.

(b) Direct Appeal of Ground Five

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND SIX Counsel's ineffective assistance resulted in cumulative errors.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The grounds previously enumerated in this petition in of themselves individually do not per se cause trial failure. However as a whole the defendant was prejudiced in the jury's perception of the facts and his Constitutional right to innocence until proven guilty by a fair trial and impartial jury was compromised.

(b) Direct Appeal of Ground Six

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

AO 243 (Rev. 01/15)

Page 16

[Redacted]

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

MR. DOUG THESIVITZ

(b) At the arraignment and plea:

MR. DOUG THESIVITZ

(c) At the trial:

MS. MELISSA FIKSDAL

(d) At sentencing:

MS. MELISSA FIKSDAL

(e) On appeal:

MS. MELISSA FIKSDAL

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* Prior to the expiration of this motion on June 8, 2020 the U.S. Supreme Court ruled that "In light of the public health concerns relating to Covid-19, the following shall apply to (cases prior) to a ruling on a petition..." "... this order is extended to 150 days from the date of the (lower court) judgement, order denying discretionary review, or order denying a timely petition for rehearing". United States Supreme Court, 2020 U.S. Lexis 1643; 88 U.S.L.W. 3309, No. 589, (March 2020). (emphasis mine).

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev. 01/15)

Page 19

Therefore, movant asks that the Court grant the following relief: The petitioner requests that this Court, based on the record, declare a fatal error occurring in his trial and vacate judgement and sentence.

or any other relief to which movant may be entitled.

Quente P. Bruguier Jr.
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 7-21-2021
(month, date, year)

Executed (signed) on 7-21-2021 (date)

Quente P. Bruguier Jr.
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

CERTIFICATE OF SERVICE AND MAILING

I, QUENTIN P. BRUGUIER JR. certify under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing attached 28 U.S.C. § 2255

was deposited in the institutional legal mail system after being properly addressed to the address(es) listed below, having first-class postage prepaid, affixed to the envelope, on the date below. The original of the attached document was filed with the clerk of court using U.S. Postal Service, at the following address:

CLERK OF U.S. DISTRICT COURT

Certified Mail Number:

Room 128.

400 S. PHILLIPS AVE.

SIoux FALLS, S.D. 57104-0000

A true and correct copy of the attached was served on:

U.S. ATTORNEY'S OFFICE

Certified Mail Number:

P.O. BOX 2638

SIoux FALLS, S.D. 57101-2638

I certify that the attached was filed with the Court, served on the above named party, and deposited in the institutional legal mail system on this 21st day of July, 2021. The attached is considered filed into the Court on the date above in accordance with Houston v. Lack, 101 L.Ed.2d 245 (1988).

Case Name: UNITED STATES

VS. QUENTIN P. BRUGUIER JR.

Case Number: CR-17-40088-KES

QUENTIN P. BRUGUIER JR.
07587-073
UNITED STATES PENITENTIARY TUCSON
P.O. BOX 24550
TUCSON, AZ. 85734-4550

CERTIFIED MAIL®



7020 0640 0002 2556 9905



X-RAYED BY
SOUTH DAKOTA
GSO

CLERK OF U.S. DISTRICT COURT
Room 128
400 S. PHILLIPS AVENUE
SIOUX FALLS S. D. 57104-0000

Legal Mail



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

